

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1487 Insurance Premium and Corporate Income Tax Credits
SPONSOR(S): Schenck and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 2280

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Economic Development</u>	<u>7 Y, 0 N</u>	<u>West</u>	<u>Croom</u>
2) <u>Economic Expansion & Infrastructure Council</u>	<u></u>	<u></u>	<u></u>
3) <u>Policy & Budget Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

The program will provide state tax credits for corporate income tax, under s. 220.11, F.S., and premium insurance tax, under s. 624.509, F.S., for qualified investments in Florida low-income communities.

The intent is to make the state more attractive to national investors who are deciding where to invest funds raised under the federal New Markets Tax Credits program by building a state “piggy-back” on tax credits offered by the federal program. Florida ranked 25th in total NMTC investment dollars during fiscal years 2003-2005.

The credit provided under this bill is 8.33 percent per year for six years after the original date of the investment. Over six years this credit totals 50 percent of the investment. Any amount of the tax credit may be carried forward infinitely—for future taxable years. The tax credits are allocated on a first-come, first-serve basis. The federal program provides credits totaling 39 percent of the investment over a seven year period. A company with a qualified investment for both the federal and state program would receive 89 percent of the purchase price of the investment in tax credits.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: This bill requires the Department of Revenue to assume new duties such as limiting the monetary amount of qualified equity investments, adjusting tax credits under certain circumstances, recapturing tax credits under certain circumstances, and adopt rules for the purpose of administering the allocation of tax credits for certain qualified investments.

Ensure Lower Taxes: This bill provides tax credits to companies or entities making investments in low-income communities in Florida.

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

Certified Capital Companies

Currently, Florida offers direct tax credits for premium insurance tax through the Certified Capital Company Act (CAPCO).

The 1998 Florida Legislature enacted the Certified Capital Company Act.¹ This program encourages private investment in venture capital by providing direct tax credits for investment in qualified businesses. The stated purpose of this act is to stimulate a substantial increase in venture capital investments in Florida by providing an incentive for insurance companies to invest in state-certified capital companies (CAPCOs) which, in turn, will invest in new or expanding businesses.² Eligible insurance companies are granted insurance premium tax credits in amounts equal to investments in CAPCOs. The increase in investment capital is intended to contribute to employment growth, create high-paying jobs, and expand or diversify Florida's economy.

To date, the insurance industry has invested \$150 million in three state-certified CAPCOs. The insurance companies may claim insurance premium tax credits totaling \$15 million each year for ten years.

According to information in the most recent annual OPPAGA report on the CAPCO program, there were 47 qualified businesses in which the CAPCOs had invested as of December 31, 2004.³ Examples of industries represented by the qualified businesses are electronic imaging, medical technology, boat manufacturing, credit card payment processing, vehicle fleet management systems, an internet portal for fishermen, and a cookie manufacturer. The most recent investments include businesses predominantly in the child daycare, landscaping, and restaurant industries. The total number of full-time jobs in qualified businesses at the time of the initial investments in the 47 companies was 1,218. The total number of full-time jobs in all qualified businesses as of December 31, 2004 was 1,009.

While as many as nine states have created CAPCOs, this type of program is increasingly viewed by researchers as the more "problematic" of the Venture Capital Funds (VCF) programs, in terms of

¹ Section 288.99, F.S

² Section 288.99(2), F.S.

³ Section 288.99(12), F.S., requires OTTED to report annually on the performance of the CAPCO program. The following information was compiled from the latest annual report issued in 2004. Executive Office of the Governor, Office of Tourism, Trade & Economic Development, *Certified Capital Company Act Annual Report on Performance*, June 2005.

“...its high cost, poor design and target-inefficiency. Unlike any other VCF program, the CAPCO program provides a 100% premium tax credit to insurance company investors. In effect, the government underwrites the entire investment risk.”⁴

Federal New Market Tax Credit

The New Markets Tax Credit Program permits taxpayers to receive a credit against Federal income taxes for making qualified equity investments in designated Community Development Entities (CDEs). Substantially all of the qualified equity investment must in turn be used by the CDE to provide investments in low-income communities. The credit provided to the investor totals 39 percent of the cost of the investment and is claimed over a seven-year credit allowance period. In each of the first three years, the investor receives a credit equal to five percent of the total amount paid for the stock or capital interest at the time of purchase. For the final four years, the value of the credit is six percent annually. Investors may not redeem their investments in CDEs prior to the conclusion of the seven-year period.⁵

An organization wishing to receive awards under the NMTC Program must be certified as a CDE by the US Department of Treasury.

To qualify as a CDE, an organization must:

- Be a domestic corporation or partnership at the time of the certification application;
- Demonstrate a primary a mission of serving, or providing investment capital for, low-income communities or low-income persons; and
- Maintain accountability to residents of low-income communities through representation on a governing board of or advisory board to the entity.⁶

Community Development Entities in Florida, Investment by State

There are 56 CDEs in Florida scattered throughout the state.⁷ Florida trails only New York (121), California (116), Texas (66), Pennsylvania (59), and Illinois (58) in total number of CDEs.⁸

Despite a respectable number of CDEs located in the state, Florida ranked 25th in total NMTC investment dollars during fiscal years 2003-2005. The state received only 1.23 percent of total loans and investment and only 8 total projects.⁹

State	Total dollar amount of loans and investment	Percentage of all loans and investment	Number of NMTC projects	Percentage of NMTC projects
1. California	\$303,081,270	9.74	58	9.95
2. New York	239,178,566	7.68	25	4.29
3. Ohio	201,857,969	6.49	69	11.84
4. Maine	153,527,250	4.93	13	2.23
5. Wisconsin	149,131,108	4.79	26	4.46
6. Missouri	146,165,868	4.70	22	3.77
7. Massachusetts	145,059,237	4.66	34	5.83
8. Kentucky	135,117,406	4.34	44	7.55
9. North Carolina	126,420,590	4.06	14	2.40
10. Washington	125,703,680	4.04	19	3.26
11. Minnesota	122,587,357	3.94	13	2.23
12. Oklahoma	112,092,186	3.60	24	4.12

⁴ Statement of Professor Daniel Sandler, University of Western Ontario, London; senior research fellow of the Taxation Law and Policy Research Institute, Melbourne; associated with Minden Gross Grafstein & Greenstein LLP, Toronto. See Daniel Sandler, *Venture Capital and Tax Incentives: A Comparative Study of Canada and the United States* (Toronto: Canadian Tax Foundation, 2004).

⁵ Information contained in this paragraph can be found at http://www.cdfifund.gov/what_we_do/programs_id.asp?programID=5 (visited 3/15/07).

⁶ Available online at http://www.cdfifund.gov/what_we_do/programs_id.asp?programID=5 (visited 3/15/07).

⁷ Available online at <http://www.cdfifund.gov/docs/certification/CDEstate.pdf>.

⁸ Id.

⁹ Information found in the table came from the United States Government Accounting Office (GAO) *Report to Congressional Committees, Tax Policy, January, 2007*.

13. Oregon	111,464,317	3.58	14	2.40
14. Maryland	106,171,382	3.41	14	2.40
15. New Jersey	83,439,000	2.68	7	1.20
16. Pennsylvania	77,111,177	2.48	21	3.60
17. Arizona	68,476,055	2.20	8	1.37
18. Washington D.C.	67,715,807	2.18	10	1.72
19. Texas	65,644,265	2.11	11	1.89
20. Michigan	57,541,869	1.85	10	1.72
21. Virginia	55,898,873	1.80	8	1.37
22. Rhode Island	55,235,675	1.77	3	0.51
23. Utah	53,884,716	1.73	14	2.40
24. Georgia	38,516,906	1.24	4	0.69
25. Florida	38,261,093	1.23	8	1.37

Effects of Proposed Changes:

HB 1487 creates the Florida new markets development program. The program will provide state tax credits for corporate income tax, under s. 220.11, F.S., and premium insurance tax, under s. 624.509, F.S., for qualified investments in Florida low-income communities.

The intent of the bill is to “piggy-back” on tax credits offered by the federal New Markets Tax Credit Program to provide greater investment in Florida. Parts of the bill follow federal law related to the New Markets Tax Credit Program;¹⁰ differences will be identified through the analysis.

Qualified Investments

A “qualified equity investment” means any equity investment or long-term debt security by a qualified CDE that:

- Is acquired on or after July 1, 2007;
- Has at least 85 percent of its cash purchase priced invested in a qualified low-income community investments; and
- Is designated by the CDE as a qualified equity investment, regardless whether the investment was designated under the federal New Markets Tax Credit Program.

In addition, a qualified equity investment may mean an equity investment or long-term debt security that is currently a qualified equity investment.

The qualified equity investment does not have to be approved under the federal program. As such, the bill appears to be missing program criteria and oversight for those investments not approved by the federal program.

The definition for a “qualified equity investment” in this bill expands the federal definition allowed under Sec. 45D of the Internal Revenue Code. It allows a CDE to designate a qualified investment regardless of whether it is approved under the federal program; and it allows for long-term debt security to be a qualified investment.

“Long-term debt security” means any debt instrument issued by a CDE, “at par value or a premium, having an original maturity date of at least 7 years following the date of its issuance, with no acceleration of repayment, amortization, or prepayment features before its original maturity date, and having no distribution, payment, or interest features related to the profitability of the qualified community development entity or performance of the qualified community development entity’s investment portfolio.”

The bill does not define what types of businesses the investments must be made in, nor what economic indicators classify a low-income community.

¹⁰ Sec. 45D Internal Revenue Code.
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Qualified Active Low-Income Community Business

A “qualified active low-income community business” is defined as having the same meaning as what is provided in federal law. It also includes language different from federal law that states the business must not derive 15 percent or more of its annual revenue from the rental or sale of real estate.

Tax Credits

The bill allows a tax credit to be taken annually only after the investment has been made and held for a full year. The credit provided under this bill is 8.33 percent per year for six years after the originally date of the investment. Over six years this credit totals 50 percent of the investment. Any amount of the tax credit may be carried forward infinitely, for future taxable years. The tax credits are allocated on a first-come, first-serve basis.

The federal program provides credits totaling 39 percent of the investment over a seven year period. A company with a qualified investment for both the federal and state program would receive 89 percent of the purchase price of the investment in tax credits.

A business would qualify for credits as follows:

Year	State Program	Federal Program
1	0%	5%
2	8.33%	5%
3	8.33%	5%
4	8.33%	6%
5	8.33%	6%
6	8.33%	6%
7	8.33%	6%

The issuer¹¹ certifies an investment to the Department of Revenue (department). The CDE is required to provide the department the anticipated dollar amount of an investment in the state during the first 12-month period following the initial credit allowance date. The department is required to adjust future credits if the actual amount of the investment is different from the estimated amount.

The bill does not allow the transfer or sale of tax credits, but does allow a tax credit to travel with the purchase of an investment to a new owner.

The maximum amount of tax credits allowed in any year shall not exceed \$15 million.

The department shall recapture tax credits available to an investor if:

- For any reason the federal government recaptures a related tax credit;
- The CDE redeems any principal repayment related to the investment prior to its seventh anniversary; and
- The requirement to maintain at least 85 percent of the investment in low-income community investments in Florida is not met.

The bill gives the department rulemaking authority to administer this tax credit program.

The bill does not provide a sunset or repeal of the statute, review of the program, or annually reporting related to the investments or tax credits. A specific statute for this program is not provided in the bill.

¹¹ The term “issuer” is not defined; but it appears it indicates the CDE.

The Department of Revenue raised many concerns with this bill; examples of these include:

- Tax credits are generally codified within a statute and not codified just within the Laws of Florida;
- The bill does not provide for the order in which tax credits will be claimed by businesses;
- The bill does not provide for the usual and customary add back of the amount of the credit against corporate income tax;
- The bill does not provide dates for when tax credits are eligible;
- The calculation of the amount of qualified low-income community investments will be very difficult to quantify;
- The department is unclear on how it will be able to monitor that no more than \$15 million in tax credits are allowed per a year; and
- The department is unfamiliar with evaluating contracts to ensure investments meet the definition of a long-term security debt.

C. SECTION DIRECTORY:

Section 1: New Markets Development Program

Subsection (1) provides definitions.

Subsection (2) provides taxpayers who hold a qualified equity investment on a credit allowance date of the investment are entitled to a nonrefundable, nontransferable tax credit for the taxable year in which the credit allowance date falls; provides for calculating the amount of the tax credit; limits the amount of the tax credit that may be redeemed in a fiscal year; provides for the redemption of tax credits earned by certain business entities and by the partners, members, or shareholders of those entities; authorizes a taxpayer to carry over any amount of the tax credit that the taxpayer is prohibited from redeeming in a taxable year to any subsequent taxable year.

Subsection (3) requires the issuer of a qualified equity investment to certify to the Department of Revenue the anticipated dollar amount of investments to be made in this state during a specified period following the initial credit allowance date; requires the department to limit the monetary amount of qualified equity investments to a level necessary to limit the use of tax credits to a specified amount in each fiscal year; provides a basis for such limitation; authorizes the department to adjust tax credits under certain circumstances.

Subsection (4) requires the department to recapture tax credits from certain taxpayers under certain circumstances.

Subsection (5) requires the department to adopt rules; requires the department to administer the allocation of tax credits for certain qualified investments in a specified manner.

Section 2: Provides an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may bring new businesses and jobs to some of Florida's poorest areas. It is possible that a positive impact on state government revenues could result through an increase in sales and use tax and other tax revenues.

2. Expenditures:

This bill provides up to \$15 million annually in tax credits.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill may bring new businesses and jobs to some of Florida's poorest areas. It is possible that a positive impact on local government revenues could result in increased local tax revenues.

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

One of the goals of this bill is provide tax credits for investment into some of Florida's poorest areas that could result in new businesses and new jobs. This bill may have a positive economic impact on the private sector.

D. FISCAL COMMENTS:

See subsections "B.1" and "C" above.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds. This bill does not reduce the percentage of state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

B. RULE-MAKING AUTHORITY:

This bill grants rule-making authority to the Department of Revenue for the purpose of administering the provisions set out by this bill including the recapture provision and the allocation of tax credits issued for qualified equity investments.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill does not provide a statute for this program.

The bill does not provide a sunset or repeal of the statute, review of the program, or annually reporting related to the investments or tax credits.

The Department of Revenue raised many concerns with this bill; examples of these include:

- Tax credits are generally codified within a statute and not codified just within the Laws of Florida;
- The bill does not provide for the order in which tax credits will be claimed by businesses;
- The bill does not provide for the usual and customary add back of the amount of the credit against corporate income tax;
- The bill does not provide dates for when tax credits are eligible;

- The calculation of the amount of qualified low-income community investments will be very difficult to quantify;
- The department is unclear on how it will be able to monitor that no more than \$15 million in tax credits are allowed per a year; and
- The department is unfamiliar with evaluating contracts to ensure investments meet the definition of a long-term security debt.

D. STATEMENT OF THE SPONSOR

No statement provided.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On Tuesday March 30, 2007, The Committee on Economic Development reported the bill favorably with one amendment. The amendment:

- Allows DOR to allocate tax credits of up to \$15 million per fiscal year and any credits not awarded or any credits that are forfeited shall be available in subsequent fiscal years;
- Requires the taxpayer to provide audited financial statements to DOR and make an irrevocable decision at the time when the qualified equity investment is made to apply the tax credit to tax liabilities set out in chapter 220 or chapter 624 or a combination of both. The decision will be binding on any subsequent holder of the credit;
- Added language to specify the right of DOR to revoke tax credits that are not applied in a lawful manner. Any applicant that submits a fraudulent application will be penalized double the amount of the credit and that applicant will be liable for any costs associated with processing a fraudulent claim; and
- Provides a repeal date of July 14, 2014, except for tax credits that are carried forward as specified.